

## Overpayment: administrative error and 'good faith'

CONDOS and SECRETARY TO THE DfaCS  
(No. 13471)

**Decided:** 23 November 1998 by L.S. Rodopoulos.

### Background

Condos had been receiving sole parent pension. Her son turned 16, which is the age at which entitlement to sole parent pension is lost. Condos duly advised the DfaCS of that fact and she was transferred to newstart allowance. However due to an administrative error, sole parent pension continued to be paid to her, in addition to newstart allowance, for a period of some 10 months. The dual payment meant that each fortnight she received, instead of \$350, between \$600 and \$700 into her account.

Condos sought review of the decision to recover the debt that was raised. In the course of internal review the authorised review officer reduced the debt by 4 fortnights' payments, as Condos had not received a bank statement in that time, to put her on notice of the receipt of additional sums. From the time of the receipt of that bank statement however, the review officer considered that 'good faith' could not be established. The DfaCS acknowledged that the debt itself arose solely due to administrative error.

### The issues

There was no dispute about the existence of the debt. The sole issue before the AAT was the question of whether the debt should be waived. As administrative error was acknowledged and accepted by the DfaCS, the issues were further refined, under the applicable waiver provision in the *Social Security Act 1991* (the

Act), to the question of whether Condos received the payments in 'good faith'.

### The legislation

Sub-section 1237A(1) of the Act provides as follows:

'Subject to subsection (1A), the Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.'

### Receipt in 'good faith'

Condos told the AAT that she had not realised that she was receiving the extra payments each fortnight. She operated her finances and spending through a credit card facility, and whilst she said she checked her credit card statement and her 3 monthly statement credit balance figures carefully, she said she did not check closely the details of amounts credited to her account. The credit card had an upper limit of \$3000. When payment was due, Condos told the AAT, she 'just hoped' there would be sufficient to cover the payment. She did say, however, that she was relieved she had money to pay her credit card debt and regarded it as a 'bonus' if there was money in the account.

The DfaCS argued that from the time of the first bank statement issuing, Condos was in a position to know she was receiving dual payments from Centrelink.

The Tribunal looked at relevant Federal Court and AAT authorities on the issue of 'good faith'. The Tribunal stated the test as set out by the Federal Court in *Secretary to DEETYA v Prince (1997)* 152 ALR 127 (1998) 3 SSR 37 which required consideration of whether the payment was received in good faith, not whether the person acted in good faith towards the DfaCS. The Tribunal citing from *Prince* (at p.130) said that the focus:

'... is with the state of mind of a person concerning his or her receipt of the payment: if that person knows or has reason to know that he or she is not entitled to a payment received — ie is not entitled to use the moneys received as

his or her own — that person does not receive the payment in good faith. Absent such knowledge or reason to know the receipt would be in good faith.'

The Tribunal relied also on the earlier AAT case of *Mallows and Secretary to the DSS (1997) 25 AAR 491*, a decision which predated *Prince* but examined the authorities on the issue of 'good faith' extensively. The Tribunal cited from that case as follows:

'It seems to me on review of these authorities that the exercise of good faith is contextual . . . The context will determine a reasonably expected standard of conduct which should be exercised with ordinary prudence and caution and necessitate reasonable inquiry.'

(Reasons, para.12)

The AAT stated that in Condos' case there were 3 aspects of the 'context' that the Tribunal must consider:

- that Condos was in the situation because of administrative error;
- that she claimed no knowledge that her account had unexpected 'bonuses';
- that she received 3-monthly bank statements.

The AAT considered that part of the context to be taken into account was whether Condos did not know or have reason to know she was not entitled to the payment she received. It found that Condos had limited literacy skills and that she 'trusted' Centrelink to get the payment right. However, the AAT also found that Condos did understand that she was entitled to one payment only. The Tribunal concluded that Condos' awareness of the bonuses constituted a 'reason to know' that she was receiving payments to which she was not entitled — as per the test as set out in *Prince*.

### Formal decision

The AAT affirmed the decision under review.

[M.C.]